

31. Section 583.7 is amended by revising paragraphs (b)(2) and (b)(3) to read as follows:

§ 583.7 Proof of Compliance.

* * * * *

(b) * * *

(2) Reviewing a copy of the tariff rule published by the NVOCC and in effect under § 514.15(b)(24) of this chapter; or

(3) Any other appropriate procedure, provided that such procedure is set forth in the carrier's tariff of general applicability as required by § 514.15(b)(25) of this chapter.

* * * * *

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 95-12511 Filed 5-22-95; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 107

[Docket No. HM-208B, Amdt. No. 107-34]

RIN 2137-AC58

Hazardous Materials Transportation Registration and Fee Assessment Program

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule.

SUMMARY: RSPA is maintaining the current annual registration fee of \$300 (which includes a \$50 processing fee), for persons engaged in transporting or offering for transportation certain categories and quantities of hazardous materials in intrastate, interstate, and foreign commerce. In addition, this final rule adopts two changes to the statutorily mandated registration and fee assessment program. Applicability of the registration requirement to materials that are extremely toxic by inhalation (Hazard Zone A) is expanded to include materials in a hazard class or division other than Division 2.3 or Division 6.1. RSPA is also adopting an exception from the registration requirement for foreign offerors, as authorized by the amended statute.

EFFECTIVE DATE: July 1, 1996.

FOR FURTHER INFORMATION CONTACT: David Donaldson, Office of Hazardous Materials Planning and Analysis, (202) 366-4484, or Joan McIntyre, Office of Hazardous Materials Standards, (202) 366-4488, RSPA, Department of

Transportation, 400 Seventh Street SW., Washington, DC 20590-0001.

SUPPLEMENTARY INFORMATION:

I. Background

On July 9, 1992, RSPA published a final rule under Docket HM-208 [57 FR 30620], establishing a national registration and fee assessment program, as required by 49 U.S.C. 5108 *et seq.* (Federal hazardous materials transportation law), for persons engaged in transporting or offering for transportation certain categories and quantities of hazardous materials in intrastate, interstate, and foreign commerce. Persons subject to the registration program are required to file annually a registration statement with RSPA and pay a total annual fee of \$300, of which \$250 is used to fund the Hazardous Materials Public Sector Training and Planning Grants Program, and \$50 is used to offset processing costs. The registration fee of \$250 is the minimum amount permitted under the statute. Grants to States and Indian tribes are expected to total more than \$20 million through 1995, the third year that this program has been in effect. Average annual funding levels (\$6.3 million) however have been below the congressionally authorized level of \$18.975 million per year.

On January 30, 1995, RSPA issued a notice of proposed rulemaking (NPRM) (Docket HM-208B; 60 FR 5822) that proposed changes to increase the annual registration fee for certain persons. The NPRM distinguished between large, medium, and small entities that conduct operations in one or more of the five categories for which registration is required. RSPA proposed a four-level fee structure that considered the comparative risks that may be posed by the types and quantities of transportation activities covered by the registration requirement. The annual fee, under the graduated fee schedule proposed by RSPA, would be determined on the basis of the registrant's transportation activity during the prior calendar year: large (\$5,050), medium (\$2,550), small (\$500), and low (\$300).

II. Graduated Fee Schedule

More than 350 comments were received in response to the NPRM. Commenters opposing the increased fee schedule generally claimed that improved compliance efforts would eliminate the need to increase the fees to fully fund the grant program. Twelve commenters who supported the proposal to increased fees representing several States and local emergency

response organizations that benefit directly from the grants program indicated a need for increased funding for grants. Approximately 100 inquiries were forwarded by Members of Congress on behalf of their constituents. Many commenters raised several complex issues and suggested various funding alternatives.

As indicated in the notice of proposed rulemaking, an Industry Working Group (IWG), facilitated by the Hazardous Materials Advisory Council, and reflecting the perspective of many persons subject to the registration and fee collection requirements, provided recommendations on how the registration and fee collection requirement could be improved. Those recommendations contain the basic themes that are reflected in many of the 350 comments. In addition, the IWG offered numerous suggestions on how RSPA may be able to more effectively communicate registration requirements in non-technical language that the regulated community can more easily understand. RSPA has revised its brochure describing the registration program to reflect many of changes suggested by the IWG.

RSPA received comments on behalf of the Alliance for Uniform Hazmat Transportation Procedures (Alliance), the National Conference of State Legislatures (NCSL), and the National Association of SARA Title III Officials. These commenters, reflecting the perspective of entities that benefit from the State and Indian tribe grant program funded by the fee, also generally opposed RSPA's proposed graduated fee structure. For example, NCSL believes that because RSPA has not generated, collected, or disbursed what NCSL considers as "modestly authorized levels," the purpose of the Federal program has been eroded. NCSL strongly recommended that RSPA reevaluate the Federal registration program with an eye toward elimination. The Alliance opposed the fee schedule and believes that RSPA's actions will create obstacles in the registration of motor carriers by States and that implementation of the proposed fee schedule is premature.

Based on the comments RSPA received in response to the NPRM, including the various alternatives and recommendations presented, RSPA has decided not to adopt the current proposal to increase the registration fees at this time. Regulations regarding registration (Subpart G to 49 CFR Part 107) are retained. Therefore, the annual registration fee remains at \$300. This decision will maintain the current levels of funding to the States and Indian

tribes for the Hazardous Materials Public Sector Training and Planning Grants Program.

RSPA plans to assess fully the registration and grants program before considering further action regarding an increase in the fee. RSPA will work with its Federal, State, and local partners, industry and labor, and environmental and public interest groups, to examine the costs and benefits of these programs. One aspect of this assessment may include an evaluation of combining several legislative mandates into a State-administered uniform program for permits and registration. RSPA's outreach efforts on this matter may include public meetings and workshops, as well as participation in meetings and seminars sponsored by others. RSPA will also continue to promote maximum compliance with the current registration program.

III. Foreign Offerors

Foreign offerors are included in the definition of "persons" who are subject to the registration requirement to the extent that they engage in any of the activities covered by the registration program. However, because of the potential for reciprocal actions by other governments, and significant problems associated with informing and identifying the parties concerned, RSPA delayed application of the registration requirement to these entities until July 1, 1996. See 49 CFR 107.606(f). Subsequently, section 104 of Public Law 103-311, enacted August 26, 1994, amended 49 U.S.C. 5108(a) by adding a new subparagraph that reads as follows:

(4) The Secretary may waive the filing of a registration statement, or the payment of a fee, required under this subsection, or both, for any person not domiciled in the United States who solely offers hazardous materials for transportation to the United States from a place outside the United States if the country of which such person is a domiciliary does not require persons domiciled in the United States who solely offer hazardous materials for transportation to the foreign country from places in the United States to file registration statements, or to pay fees, for making such an offer.

In this final rule, RSPA makes permanent the exception currently provided in § 107.606(f). However, as proposed in the NPRM, the general exception in § 107.606(a)(6) is limited to persons who offer hazardous materials for transportation to the United States from a foreign country that does not impose a registration statement or fee payment requirement on a person domiciled in the United States who offers hazardous materials for transportation to that country.

In § 107.606(b), RSPA explains that persons domiciled in countries that enforce a registration statement or fee payment requirement must file a registration statement and pay the annual fee upon a positive determination made by RSPA's Associate Administrator for Hazardous Materials Safety, the U.S. Competent Authority, that the other country's requirement is prejudicial to persons domiciled in the United States. The U.S. Competent Authority's determination will be communicated directly to the other country's Competent Authority, and will be published in the **Federal Register**. No later than 60 days following publication in the **Federal Register** of that Competent Authority determination, offerors domiciled in the other country are required to file a registration statement and pay the annual fee. If such an offeror does not register as required, it may not offer a hazardous material for transportation from that country to the United States.

IV. Expanded PIH Registration Requirements

As proposed in § 107.601(c), RSPA is broadening the scope of materials extremely toxic by inhalation covered by the registration requirement, to include every "material poisonous by inhalation" (PIH) as defined in 49 CFR 171.8 that meets the criteria for Hazard Zone A (extremely toxic). This change addresses several PIH materials that are listed in the Hazardous Materials Table in 49 CFR 172.101 as a Class 3, Class 8, Division 4.2 or Division 5.1 hazardous material. RSPA believes that this change will not add a substantial number of persons that are required to register.

V. Rulemaking Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule is considered a significant regulatory action under section 3(f) of Executive Order 12866 and was reviewed by the Office of Management and Budget. This rule is considered a significant rule under the Regulatory Policies and Procedures of the Department of Transportation [44 FR 11034]. A regulatory evaluation is available for review in the Docket. Because the statute mandates the establishment and collection of fees, the discretionary aspects of this rulemaking are limited to setting the amount of the fee within the statutory range for each person subject to the registration program. The fees are not related to the cost of RSPA's hazardous materials safety programs. The fees to be paid by shippers and carriers of certain

hazardous materials in transportation are related to the benefits received by these persons from the sale and transportation of hazardous materials and from emergency response services provided by public sector resources, should an accident or incident occur. The fees are also related to expenses incurred by State, Indian tribal, and local hazardous materials emergency preparedness and response activities.

B. Executive Order 12612

This action has been analyzed in accordance with Executive Order 12612 ("Federalism"). States and local governments are "persons" under 49 U.S.C. 5102, but are specifically exempted from the requirement to file a registration statement. The regulations herein have no substantial effects on the States, on the current Federal-State relationship, or on the current distribution of power and responsibilities among the various levels of government. This registration regulation has no preemptive effect. It does not impair the ability of States, local governments or Indian tribes to impose their own fees or registration or permit requirements on intrastate, interstate or foreign offerors or carriers of hazardous materials. Thus, RSPA lacks discretion in this area, and preparation of a federalism assessment is not warranted.

C. Regulatory Flexibility Act

This final rule maintains the minimum fee requirement mandated by statute for shippers and carriers of hazardous materials who are subject to the registration requirement. Therefore, I certify that this final rule will not have a significant economic impact on a substantial number of small entities.

D. Paperwork Reduction Act

Under 49 U.S.C. 5108, the information management requirements of the Paperwork Reduction Act [44 U.S.C. 3501 *et seq.*] do not apply to this final rule.

E. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects in 49 CFR Part 107

Administrative practice and procedure, Hazardous materials

transportation, Packaging and containers, Penalties, Reporting and recordkeeping requirements.

On the basis of the foregoing, 49 CFR part 107 is amended as follows:

PART 107—HAZARDOUS MATERIALS PROGRAM PROCEDURES

1. The authority citation for part 107 continues to read as follows:

Authority: 49 U.S.C. 5101–5127, 44701; 49 CFR 1.45, 1.53.

2. In § 107.601, paragraph (c) is revised to read as follows:

§ 107.601 Applicability.

* * * * *

(c) More than one L (1.06 quarts) per package of a material extremely toxic by inhalation (i.e., “material poisonous by inhalation,” as defined in § 171.8 of this chapter, that meets a criteria for “hazard zone A,” as specified in §§ 173.116(a) or 173.133(a) of this chapter);

* * * * *

3. Section 107.606 is revised to read as follows:

§ 107.606 Exceptions.

(a) The following are excepted from the requirements of this subpart:

(1) An agency of the Federal government.

(2) A State agency.

(3) An agency of a political subdivision of a State.

(4) An employee of any of those agencies in paragraphs (a)(1) through (a)(3) of this section with respect to the employee's official duties.

(5) A hazmat employee (including, for purposes of this subpart, the owner-operator of a motor vehicle that transports in commerce hazardous materials, if that vehicle at the time of those activities, is leased to a registered motor carrier under a 30-day or longer lease as prescribed in 49 CFR part 1057 or an equivalent contractual agreement).

(6) A person domiciled outside the United States, who offers solely from a location outside the United States, hazardous materials for transportation in commerce, *provided that* the country of which such a person is a domiciliary does not require persons domiciled in the United States, who solely offer hazardous materials for transportation to the foreign country from places in the United States, to file a registration statement or to pay a registration fee.

(b) Upon making a determination that persons domiciled in the United States, who offer hazardous materials for transportation to a foreign country solely from places in the United States, must file registration statements or pay fees to that foreign country, the U.S.

Competent Authority will provide notice of such determination directly to the Competent Authority of that foreign country and by publication in the **Federal Register**. Persons who offer hazardous materials for transportation to the United States from that foreign country must file a registration statement and pay the required fee no later than 60 days following publication of the determination in the **Federal Register**.

Issued in Washington, DC on May 18, 1995, under the authority delegated in 49 CFR part 1.

D.K. Sharma,

Administrator, Research and Special Programs Administration.

[FR Doc. 95–12658 Filed 5–19–95; 9:58 am]

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National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 74–14; Notice 94]

RIN 2127–AF30

Federal Motor Vehicle Safety Standards; Occupant Crash Protection

AGENCY: National Highway Traffic Safety Administration. (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: This final rule allows manufacturers the option of installing a manual device that motorists could use to deactivate the front passenger-side air bag in vehicles in which infant restraints can be used in the front seat only. The affected vehicles are passenger cars and light trucks without rear seats and vehicles with rear seats that are too small to accommodate typical rear-facing infant restraints and convertible infant restraints used in the rear-facing mode (hereafter referred to as “typical rear-facing infant restraints”). The deactivation device is needed because when rear-facing infant restraints are used in the front seats of dual air bag vehicles, they extend forward to a point near the dashboard where they can be struck by a deploying air bag. Testing has shown this to have the potential for serious injury to infants. The ability to deactivate the passenger air bag will allow parents to safely use rear-facing infant restraints in the front seat of these vehicles. The need for the deactivation device is steadily growing because manufacturers are beginning to install, and soon will be required to install, passenger-side air bags in all passenger cars and light trucks.

DATES: Effective Date: The amendments made in this rule are effective June 22, 1995.

Petition Date: Any petitions for reconsideration must be received by NHTSA no later than June 22, 1995.

ADDRESSES: Any petitions for reconsideration should refer to the docket and notice number of this notice and be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT:

Mr. Daniel Cohen, Chief, Frontal Crash Protection Division, Office of Vehicle Safety Standards, NRM–12, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590. Telephone: (202) 366–2264.

SUPPLEMENTARY INFORMATION:

Background

On October 7, 1994, NHTSA published a notice of proposed rulemaking (NPRM) which proposed to allow manufacturers the option of installing a manual device (hereafter referred to as a “cutoff device”) that motorists could use to deactivate the front passenger air bag in a vehicle without rear seats for the purpose of allowing them to safely use rear-facing infant restraints in the front seat (59 FR 51158). NHTSA issued the NPRM because one particular type of child restraint, i.e., a rear-facing infant restraint, should not be placed in the front seat of a vehicle equipped with a passenger air bag. This poses a problem because manufacturers are beginning to install, and soon will be required to install, passenger air bags in vehicles.

While NHTSA has taken a number of steps to warn parents of air bag/infant restraint interaction problems, members of the American Automobile Manufacturers Association (AAMA) indicated a need for further action in a meeting with NHTSA on January 24, 1994.¹ AAMA asked for the meeting to explore the possibility of installing an air bag cutoff device to allow rear-facing infant restraints to be placed in air bag-equipped passenger seating positions. AAMA representatives discussed the general concept of an air bag cutoff device, which could be either automatic or manual. However, the representatives emphasized that the industry is not quite ready to install automatic devices because automatic cutoff technology is not yet ready for production. At the meeting, AAMA asked whether

¹ A complete description of various steps NHTSA has taken to address this problem can be found in the October 7 notice.